

Memorandum



Subject

Rules and Procedures Memo 2003-01

Date

April 14, 2004

To

Commissioners and All Staff

From

A handwritten signature in blue ink, which appears to read "Edward F. Reilly, Jr.", is positioned above the printed name.

Edward F. Reilly, Jr.
Chairman
U.S. Parole Commission

This rules and procedures memorandum is intended to address questions on a variety of issues ranging from release decision-making for YRA offenders to determining the commencement of supervised release terms. When appropriate, the memorandum provides a reference to the eventual location where the guidance may be placed in the Rules and Procedures Manual.

1. YRA Offenders.

Application of the §2.80 guidelines, including the policy on setting presumptive parole dates.

Since October 15, 2002, the Commission has applied the §2.80 guidelines and the procedures on setting presumptive parole dates to YRA offenders. See Rules and Procedures Memorandum 01-5. The §2.80 guidelines and presumptive date procedures should be retroactively applied to any YRA offender heard under the former Appendix to §2.80 guidelines.

Determining "months to eligibility" in applying the §2.80 guidelines (2.80-06).

In applying the §2.80 guidelines for YRA offenders (including parole violators), the number of months to eligibility is "0-0."

Reparole hearings and decisions for YRA parole violators (2.106-01).

If the Commission revokes the parole of a YRA offender, the normal procedure is to order a reparole hearing within 6 months of the revocation hearing. The reason for the delayed reparole consideration is that a program plan should be developed by institutional staff before the Commission makes a reparole decision for a youth offender. If the hearing examiner is conducting an institutional revocation hearing, and the BOP facility has already developed a program plan for the YRA offender, the reparole consideration may be held at the same time as the revocation hearing.

An effective reparole date may be ordered in lieu of scheduling a reparole hearing. Such a decision is appropriate when the Commission concludes that an extended period of confinement is not necessary to sanction the violator or provide for further correctional treatment.

The expedited revocation procedure may be used in a youth revocation case, and a reparole decision may be made without a hearing with the agreement of the violator.

Wording on orders for a YRA prisoner (Appendix 1, Standing Wording on Orders, Example I. G.).

For a YRA offender granted a presumptive parole date or continued to expiration within three years of the hearing: “Continue to a presumptive parole on [date] after the service of [] months, with a rehearing in [12 months from date of the hearing]” or “Continue to expiration, with a rehearing in [12 months from date of the hearing].” For a YRA offender not granted a presumptive parole date or continued to expiration within three years of the hearing: “Deny a presumptive parole date within three years of the hearing and continue to a rehearing in [12 months from the date of the hearing].”

Training aid regarding decision-making for YRA offenders with a total guideline range of 0 months.

The §2.80 guidelines are premised on the assumption that the prisoner has served a minimum term imposed by the sentencing judge and this term is factored into the calculation of the total guideline range. Difficulties arise in YRA cases because a YRA offender does not have to serve a minimum term and no “months to eligibility” are added in the total guideline range calculation. Similarly, use of the §2.80 guidelines for a YRA parole violator causes problems because of the absence of any “minimum term” for the violation behavior. Many YRA offenders (including a number of parole violators who have committed administrative violations) will have a base point score of 3 or less. Application of the §2.80 guidelines results in a total guideline range of 0 months and an indication of a prompt parole within several months after commitment.

Examiners are reminded that in YRA cases, response to treatment programs – evidenced in part by completion of the program plan developed by institutional staff – plays a significant role in the release decision for such cases. A YRA offender is committed for correctional training and treatment in order to improve his chances for leading a law-abiding life. Completion of the program plan is an indicant that the offender may have positively responded to treatment programs and reduced his risk of re-offending to the degree that parole is appropriate.

The examiner has the discretion to depart from the outcome indicated by the guidelines for “case-specific factors that are not fully taken into account in the guidelines, and that are relevant in the grant or denial of parole.” See 28 C.F.R. §2.80(n). In the case of a YRA offender, the examiner may consider the offender’s YRA sentence, and the concomitant need to consider correctional training and rehabilitation as significant factors in the release decision, as “case-specific factors” for a guidelines departure. Thus, the examiner may recommend a departure from the total guideline range for reasons related to the need to rehabilitate the offender, deter the offender from further crimes, and protect the public from a resumption of criminal behavior.

The following are examples of permissible reasons for departing from the guidelines in YRA cases.

Example 1: “a departure from the total guideline range is warranted because you have shown by your repeated cocaine use on parole supervision that you need further correctional treatment in an institutional setting to lead a law-abiding life. You are serving a sentence imposed under the YRA and the duration of your commitment may be based on the need to give you correctional training and treatment. You have not completed your program plan. The present estimated date of program plan completion is _____. The Commission recommends participation in a residential drug treatment

program in addition to the items already described in your institutional program plan (obtaining GED and correctional counseling).”

Example 2: “ a departure from the total guideline range is warranted because you reverted to criminal behavior (theft offenses) while on parole supervision and you need a period of confinement and further correctional training to impress upon you the consequences of your misconduct, to deter you from further crimes and to protect the public. You are serving a sentence imposed under the YRA and the duration of your commitment may be based on the need to give you correctional training and treatment. You need to complete the institutional program plan (vocational training and correctional counseling) in order to improve your chances for a successful parole.”

2. Supervised Release Terms.

Split sentences (2.201-01). A “split sentence” is a sentence in which the judge imposes a term of imprisonment and a term of supervised release, suspends execution of a portion of the prison sentence and imposes a probation term. In such a case, execution of the supervised release term is suspended along with the suspended prison sentence, and the offender serves only a probation term after release from imprisonment. The offender is subject to serve the supervised release term only if probation is later revoked and the offender is re-imprisoned. If the offender is sentenced on multiple counts and receives a split sentence on one count and a prison term with supervised release on another count, the supervised release term begins upon the offender’s release from imprisonment and runs concurrently with the probation term.

Release to pretrial custody, or custody on a warrant before a revocation or deportation hearing (2.201-02). If an offender is released from imprisonment to pretrial custody, or custody on a warrant before a revocation hearing, the supervised release term begins to run as of the date the offender is released from imprisonment to the other custody. But if there is a subsequent conviction or revocation, and the offender is imprisoned for 30 days or more, service of the supervised release term is retroactively postponed during the period of pretrial/prehearing custody and the period of imprisonment imposed for the conviction/revocation. For an offender released to custody awaiting a deportation hearing, service of the supervised release term begins immediately upon release to prehearing custody and continues to run even after the offender is deported pursuant to a deportation order.

Determining if the imprisonment for the new conviction or revocation is for “less than 30 days” (2.201-03). In deciding whether the offender has served a period of imprisonment of “less than 30 days” for a new conviction or revocation, the case analyst should use the actual time in custody served by the offender. Pretrial and prehearing custody is counted. If the imprisonment is for less than 30 days due to good time and similar credits, then service of the supervised release term is not postponed while the offender is incarcerated for the new conviction or revocation. *Example:* The offender is in pretrial custody on a new offense for 21 days, receives a conviction for the crime, and serves a 10-day jail sentence without any good time deduction. Because the imprisonment is for 30 days or more, the supervised release term does not begin until release from the jail sentence. If the offender serves only 5 days on the jail sentence due to good time deductions, the supervised release term begins upon release to pretrial custody. *Exception for intermittent sentences:* A sentence that expressly provides for intermittent periods of imprisonment of less than 30 days each (e.g., a sentence of imprisonment to be served on nights or weekends) is treated as a sentence of less than 30 days, even if the cumulative total imprisonment is 30 days or more. For example, a sentence of 60 days imprisonment to be served on weekends would not postpone the running of the supervised release term.

3. Mandatory Parole.

Subsequent hearings for long-term prisoners denied mandatory parole (2.53-06).

If the denial of mandatory parole results in a continuance for the prisoner that exceeds the applicable time period for an interim hearing (either every 18 or 24 months), the prisoner must be scheduled for a subsequent interim hearing. At the interim hearing, the prisoner shall be considered for parole under the mandatory parole criteria of §2.53(a).

4. Forfeiture of Street Time – Federal Parolees.

Revocation of probation/supervised release not a new “conviction” (2.52-01(c)(5)).

Revocation of probation/supervised release does not constitute a conviction for a crime committed while on parole under 18 U.S.C. §4210. Therefore, if the parolee is serving concurrent terms of federal parole and probation/supervised release (whether federal or state), and the court with jurisdiction over the probation/supervised release term revokes the term, time spent on federal parole cannot later be forfeited for the reason that the parolee incurred a new conviction. After the parolee serves the probation/supervised release violator term and the parole violator warrant is executed, the Commission must order concurrent service of the parole violator term with the probation/supervised release violator term through execution of the warrant *nunc pro tunc* as of the date of arrest on the probation/supervised release violator warrant.